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ASSIGNMENT OF A RIGHT TO SUE FOR RESCISSION OF A CONTRACT TO PURCHASE LAND.

It is stated to be well settled that rights of action for a tort causing injury cannot be assigned, though a judgment upon such right may be. 2 R. C. L. 610, citing authorities. This seems to have been so held as much on the principle *actio personalis moritur cum persona* as for any other reason, and statutes changing this rule do not abrogate this principle any further than as expressly provided.

But decision goes even beyond this and forbids the assignment of what is denominated a merely litigious right. In accordance with this view is a recent holding by the Supreme Court of Oregon in Cooper v. Hillsboro Garden Tracts, 152 Pac. 488.

There the suit was upon various assignments to plaintiff by assignors for whom he asked rescission of contracts to purchase land of which they had gone into possession and which contracts would be deemed affirmed by laches existing a reasonable time subsequent to the making of such contracts. It is thus seen, that personal equation was a feature of each of said contracts.

Under the view of possession by another, either transferred before or at the time of the transaction, precluding assignment, a decision by Missouri Supreme Court that the contract of assignment savors of maintenance seems pertinent. Ryan v. Miller, 236 Mo. 496, 139 S. W. 128, Ann. Cas. 1912D, 540.

But this court says: "In 2 Am. & Eng. Enc. of Law (2d Ed.) 1024, the rule buttressed by authority is stated in the following language: 'The assignment of a mere right to file a bill in equity for fraud committed on the assignor is void as being against public policy and savoring of maintenance.'

Qualification. But it seems that this rule, as established by the authorities, applies only to a case where the assignment does not carry anything which has itself a legal existence and value independent of the right to sue for a fraud. It does not apply to a case where such right is merely incidental to a subsisting substantial property which had been assigned and which is itself intrinsically susceptible of legal enforcement. In such a case the assignee is entitled to maintain an action to set aside a fraudulent conveyance of the property assigned, if his assignor might have done so."

The rule condemned is as stated in an English case that "the right to complain of a fraud is not a marketable commodity." De Houghton v. Money, L. R., 2 Ch. 164, and similar statements may be found in abundance in American decision. In the application of the rule, with such qualification as is above stated, *hic labor, hoc opus est.*

Thus there are numerous cases regarding the conveyance of property, which hold, in effect, that a conveyance of property with an incidental right to maintain a suit in equity to set aside a prior conveyance for fraud in its procurement may operate as a valid assignment. Traer v. Clews, 115 U. S. 539; Ins. Co. v. Smith, 117 Mo. 261; Gaudy v. Fortner, 119 Ala. 303. But according to the Cooper case, *supra*, the supposed beneficiary in a contract for purchase for fraud could not throw back on the other party the land agreed to be purchased.

It is thus seen that there may be a very close merging of the incidental thing with a substantial right without its passing over the line. You or your assignee may set

aside a conveyance from yourself, but you cannot for fraud assign your right to another to recover the damage from a sale to yourself, notwithstanding such conveyance may be set aside.

The principle also has been stated that "the assignment of a right to bring a bill in equity to complain of a fraud is contrary to public policy and void, especially when the assignor has no substantial possession or capability of personal enjoyment at the time of the assignment." This rule, we think quite reasonable, because the suit in such case would be greatly of a speculative nature, but, on the other hand, if the assignor had possession, which he had transferred to his assignee, this would seem like trying to foist possession or the right thereto upon defendant and, therefore, savoring of champerty, if not of maintenance.

The Cooper case refers to many cases referring to exceptions to the rule, but inasmuch as the main right for the setting aside of the contract for purchase was alone sought, there was nothing of incidental relief prayed for and it was subject to the rule. As far as we see, the general rule is excellent and ought to be little departed from. It is true one guilty of fraud should not be greatly favored with any rule of *delectus personarum* as to those he defrauds, but at the same time there is so much in the way of *laches* as showing ratification of contracts, that something of personality ought in a great measure to control. Courts are not supposed to care for those who are not vigilant as to their rights.

This rule is one that is judgemade and, therefore, the resultant of refined reasoning which later discrimination, as cases arise, may determine is subject to exception. Judgemade law differs from statutory rule, inasmuch as you do not have to appeal to reason for the latter, which speaks like a tyrant. If you appeal to precedent, precedent itself is controlling only as it snugly fits the facts.

NOTES OF IMPORTANT DECISIONS.

INTOXICATING LIQUOR—STATUTE UNDER WEBB-KENYON LAW REQUIRING INTERSTATE CARRIERS TO KEEP FOR PUBLIC INSPECTION RECORD OF LIQUOR SHIPMENTS.—The Mann-Elkins law of 1910 forbids any common carrier disclosing to any person other than shipper or consignee any information which may be used to the detriment of such shipper or consignee. The Webb-Kenyon law, enacted in 1913, takes from under the shelter of interstate commerce liquor shipments, if their receipt or delivery is in violation of state law. A Kentucky statute provided for the keeping and inspection of separate books by carriers showing shippers and consignees of liquor shipments, with details of other information regarding such shipments. This part of the statute was by Kentucky Court of Appeals held invalid. Com. v. White, 179 S. W. 469.

The court argues that liquor remained as before an article of commerce unless intended to be received, possessed or sold in violation of any law of the state where received. It was said: "To bring the transaction involved in this controversy within the operation of the Webb-Kenyon law and divest it of the protection of the commerce clause of the Constitution, the court would have to presume, without proof, that the book which Porter requested to see contained a record of shipments of liquor intended to be received, etc., in violation of the law of Kentucky. But under well-established principles of law, the contrary presumption must prevail in the absence of proof, and there is no proof here as to the character of the shipment."

But the prosecution here was against defendant as agent of a carrier for neglecting to keep open for public inspection the separate record referred to, and why this was not a fair requirements is not perceived. The Mann-Elkins law was enacted prior to the Webb-Kenyon law, and its purpose was to protect shipments remaining interstate commerce shipments

while in the hands of carriers. It did not consider presumptions at all, but it related to shipments which as matter of law were interstate. It did not contemplae secrecy in regard to those taken out of the shelter of interstate commerce. If the Webb-Kenyon Act contemplated any exceptional shipments, did it not also give states the right to ascertain their existence?

ATTORNEY AND CLIENT—CONTINGENT FEE WHERE CLAIM IS COMPROMISED BY CLIENT.—Arkansas statute provides for a lien on a client's cause of action, claim or counterclaim which attaches to a verdict, report, decision, judgment or final order in his client's favor and the proceeds in whatsoever trials they may come; and the lien thereon cannot be affected by any settlement between the parties before or after judgment or final order. Plaintiff sued for a reasonable fee as attorney for plaintiff in a suit and recovered. Defendant appealed and the judgment was modified so as to allow 50 per cent of the amount for which the claim was settled by the client. Kirtley & Gulley v. St. L. & C. R. Co., 179 S. W. 648.

Arkansas Supreme Court adopts the construction put upon the statute by New York courts, from which state it was borrowed. This construction is put upon the theory, that it was not intended by the Legislature that an honest and genuine adjustment of suits should be prevented and the client's absolute control over his litigation always should be recognized.

The words of the statute seemed to need a rule of this kind to wrest them from their plain meaning, but it is by no means clear that an estimation of the real value of the course of action in favor of an attorney would have the effect supposed by New York courts.

We believe an attorney could make his per centage of recovery larger or smaller upon the amount realized being by compromise or at the end of litigation and he could contract for a larger amount proportionally upon a smaller compromise than if the case were to be pushed through to judgment, especially as the statute provides that settlement shall not affect this lien. A compromise surely affects the value of the lien in affecting what it rests upon. By such a statute policy of law is declared to favor contingent fee contracts and this policy reasonably ought to be upheld.

WORKMEN'S COMPENSATION ACT—EMPLOYE IN ENFORCING ORDER KILLED BY TRESPASSER.—Liberality in enforcement of Workmen's Compensation Act appears in a recent case decided by Massachusetts Supreme Judicial Court. In re Reithel, 109 N. E. 951.

The employe in this case was the superintendent of a mill and it was a part of his duty to order out of the mill persons entering without permission. A trespasser on a former occasion annoyed a woman employe, thus creating disturbance in the mill. The superintendent reported the matter to the manager of the mill, and was told by him that if the trespasser again appeared on the premises to order him out, and if he refused to go to send for the police. The trespasser again appeared and threatened the woman employe with a revolver. The superintendent walked toward the trespasser and pointing toward the door, ordered him to leave. He was shot by him without further ado and fatally injured.

The court said: "The liability to whatever personal injury might be likely to arise in dealing with such a person (the trespasser in this case) was in the contemplation of the employer and employe in establishing the boundaries of the latter's duty. That became a risk of the employment. It is not usual for people with whom a mill superintendent comes in contact to commit crime. Conduct of that sort is not to be presumed nor commonly expected. But when a special duty arises to deal with one who is a trespasser, an annoyer of a woman employe and a creator of disturbance, then a corresponding special risk of personal violence arises. That duty and that risk then become correlative. * * * The causative danger was peculiar to his work. It was incidental to the character of the employment and not independent of the relation of master and servant. The consequence after the event appears to have had its origin in a hazard connected with the employment and to have flowed from that source as a rational consequence, and the injury seems to have arisen in the course of the employment."

It is to be stated that the Massachusetts act does not require that an injury be also an accident and therefore it is more liberal in this respect than the English act, but it is said there are English cases that support the conclusion reached.

THE COMPETENCY OF BLOODHOUND EVIDENCE.

The question of the admissibility of evidence of the actions of bloodhounds in following the track of a supposed criminal is an interesting one to the practitioner. Although this class of evidence is not new to the law, yet comparatively few cases involving it have reached courts of last resort, and in many of the states the question has not been passed upon by their higher courts.

The authorities are not in accord as to whether such evidence can be admitted. While it is claimed by some courts that such evidence is proper under certain restrictions, yet others vigorously declare that it is too unreliable to be accepted as evidence in either civil or criminal cases, and that the use of bloodhounds properly belongs to the days of slavery, and of the bloody criminal code of the Dark Ages.

It is also pointed out by some of the courts that the admission of such evidence must be closely guarded on account of the fact that the exercise of a mysterious power by bloodhounds not possessed by human beings, begets in the minds of many people a superstitious awe, and they see in such an exhibition a direct interposition of Divine Providence in aid of human justice.[1]

It is the purpose of this article to review some of the leading cases with a view of deducting therefrom the better rule.

In a majority of the jurisdictions where the question has been raised, it has been held that, when the foundation has been laid to the satisfaction of the court, bloodhound evidence may be admitted to the jury for what it is worth, though it must always be shown by other evidence that the dog was placed upon the trail, whether visible or not, concerning which the other evidence in the record relates, at a point where the circumstances tend clearly to show that the guilty person has been and has made the trail.[2]

One of the first cases upon the subject arose in the State of Ohio,[3] and was a case at *nisi prius*. In the decision the question as to the competency of bloodhound evidence is treated historically, and the use of bloodhounds for scenting and tracking enemies or fugitives is shown to have been in vogue, hundreds of years ago. It was there held that bloodhounds trained to follow human tracks could be shown to have been put upon the scent or track of a person twenty-four hours after a burglary, at a point about 200 yards from the place where the burglary was committed, and at a point where a basket filled with loot was found concealed, and that they followed such track or scent to the door of the defendant. In that case, the court said, "In such cases full opportunity should be given to inquire into the breeding and testing of the dog and to all the circumstances attending the trailing in the case on trial, and to the manner in which the dog then acted and was handled by the person having it in charge. The weight to be given to the tracking as evidence against the accused will depend largely upon these matters." This case has been commented upon as going "to far," and when the same question was later before the Supreme Court of Ohio, the Hall case is cited, but not quoted from.[4]

(1) Pedigo v. Commonwealth, 103 Ky. 41, 42 L. R. A. 432, 82 Am. St. Rep. 566, 44 S. W. 143.

(2) Parker v. State, 46 Tex. Cr. R. 461, 80 S. W. 1008, 108 Am. St. Rep. 1021, 3 Ann. Cas. 893, and note; State v. Dickerson, 77 Ohio St. 34, 82 N. E. 969, 122 Am. St. Rep. 479, 11 Ann. Cas. 1181; Spears v. State, 92 Miss. 613, 46 South. 166, 16 L. R. A. (N. S.) 285; Gallant v. State, 167 Ala. 60, 52 South. 739; Underhill on Crim. Evidence (2nd Ed.), § 374a; 1 Wigmore on Evidence, 177; Elliott on Evidence, § 1253.

(3) State v. Hall, 3 Ohio, N. P. 125, 4 Ohio, S. & C. P. Dec. 147.

(4) See the following Ohio cases: State v. Brooks, 1 Ohio Dec. Reprint 407, where evidence was admitted of the fact of a dog scenting a track a short time after a railroad wreck caused by train-wreckers. Baum v. State, 6 Ohio, C. C. N. S. 515, 27 Ohio, C. C. 569, where the reasons given the Hall case are adopted. This opinion contains a well-stated summary of the rule as it appears to that Court. See also State v. Dickerson, 77 Ohio St. 34, 13 L. R. A. (N. S.) 341, 122 Am. St. Rep. 479, 82 N. E. 969, 11 A. & E. Ann. Cas. 1181.

An early decision upon this question was made by the Supreme Court of Alabama[5] and is known as the "Hodge case." It was a trial for murder, and it appeared that on the night of the killing, or just after it was done, several witnesses went to the place and discovered in close proximity to the house, man tracks. The tracks were sufciently marked to be easily followed, and were followed by several of the witnesses, up to, or very near to, the house of defendant. One of the witnesses while on the stand was asked the following question: "If he had at the time he was searching for tracks, a trained dog for tracking a man?" Against objection, the witness was permitted to state that he did own such a dog; that, when the tracks were discovered, near the house of deceased, he got his dog and put him on the tracks, and that the dog, after taking the trail, followed the tracks and went to defendant's house, being followed by the witness. In sustaining the lower court's action, the higher court said: "It is common knowledge that dogs may be trained to follow the tracks of a human being with considerable certainty and accuracy. The evidence in this case showed that a dog thus trained was, within a very short time after the homicide, put upon the tracks of the person towards whom all the circumstances strongly pointed as the guilty agent, and that the dog, as if following these tracks or 'trailing,' went to the house of the defendant." There was other evidence showing that measurements were made of the tracks at various points along the route, and they were identified at each point as having been made by the same shoes as were the tracks at the place of the murder; and it was held that "the fact that the dog, trained to track men, as shown in the testimony was put on the tracks at the scene of the homicide, and 'taking the trail,' so to speak, went thence to defendant's house, where he (the defendant) is shown to have been that night after the killing, was competent to go to the jury for consideration by them, in connection with all the other evidence, as a circumstance tending to connect the defendant with the crime."[6]

In the syllabus of a Florida case[7] which was prepared by the court, we find the following: "Testimony as to the action of dogs in following the trail of a supposed criminal from the scene of a crime is admissible in evidence provided such preliminary proof be given of the qualities and training of the dog as to show that reliance may reasonably be placed upon its accuracy in following the trail of a human being." In the opinion of the court, by Cockrell, J., it is said: "There should first be testimony from some person who has personal knowledge of the fact that the dog used has an acuteness of scent and power of discrimination which have been tested in the tracking of human beings. The intelligence, training and purity of breed are all proper matters for consideration in determining the admissibility of such evidence, as is also the behavior of the dog in following the track pointed out. In the record before us, there is no proof of the breed of the dogs, and, while there is proof that they had been trained for six months, there is no proof that they were trained in the tracking of human beings. It is questionable whether

(5) Hodge v. State, 98 Ala. 10, 39 Am. St. Rep. 17, 13 So. 385.

(6) See the following Alabama cases: Simpson v. State, 111 Ala. 6, 20 So. 573, where bloodhound evidence was admitted, and court refused to allow cross-examination of owner, as to whether hounds in question had not on another occasion left the human track and killed a sheep. Ruling was based on ground that the test by comparison was not sufficiently certain to determine the reliability of the dogs; Richardson v. State, 145 Ala. 46, 41 So. 82, 8 A. & E. Ann. Cas. 108; Hargrove v. State, 147 Ala. 97, 119 Am. St. Rep. 60, 41 So. 972, 10 A. & E. Ann. Cas. 1126; Gallant v. State, 167 Ala. 60, 52 So. 739; in this case, Simpson v. State (cited above), is distinguished and it is held that a witness testifying as to the ability of the dogs to take the scent of human beings may give a comparison between the dogs in question and others he has seen perform, to show his qualification; from observation, to have and entertain an opinion as to when a dog has been trained to track human beings.

(7) Davis v. State, 46 Fla. 137, 35 So. 76.

this is sufficient." As this case had to be reversed on other grounds, the admission of the evidence referred to was not made a ground for reversal.[8]

In a North Carolina case[9] the court, while admitting that if properly connected up, the evidence of actions of bloodhounds would be proper, held that in that case there was no evidence to connect the circumstances of the baying at the two defendants by the hounds with the making of the tracks at the time the larceny was committed, or any evidence that the dog scented any that were then made by either of the defendants. The court, in passing, said: "This is a novel feature of evidence in our jurisprudence, and is attended with some danger, and is calculated to excite the superstition of some people that the exercise of that instinctive power, not possessed by human beings, is a supernatural agency in the aid of human justice, to which too great importances may be attached and against which courts will have to guard when the occasion arises."[10]

In a Kentucky case[11] which is often cited as a leading one, that court sanctioned the admissibility of testimony as to trailing by bloodhounds, but circumscribed its admissibility so that its use may be said to be very limited. The court, after discussing the fact that it was a matter of common knowledge that dogs of certain varieties (as the bloodhound, foxhound, pointer and setter) were remarkable for acuteness of their sense of smell, and for their power of discrimination between the track they were first laid on and others which might cross it, calls attention to the fact that it is also a matter of common knowledge that all dogs do not possess this power in the same degree, and that some dogs of purest pedigree prove worthless upon trial. The court finally states its conclusion as to the better rule, as follows: "After a careful consideration of this case by the whole court, we think it may be safely laid down that, in order to make such testimony competent, even when it is shown that the dog is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, it must also be established that the dog in question is possessed of these qualities, and has been trained or tested in their exercise in the tracking of human beings, and that these facts must appear from the testimony of some person who has personal knowledge thereof. We think it must also appear that the dog so trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted at a point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicated to have been made by him. When so indicated, testimony as to trailing by bloodhound may be permitted to go to the jury for what it is worth, as one of the circumstances which may tend to connect the defendant with the crime of which he is accused. When not so indicated, the trial court should exclude the entire testimony in that regard from the jury."[12] The restrictions above

(8) On a subsequent appeal of Davis v. State, 47 Fla. 26, 36 So. 170, it was held that, on the evidence afforded by the trailing of dogs, not shown to have had the requisite breeding and training, had no tendency to connect the accused with the offense, and could not have influenced the verdict of the jury, its admission was harmless error.

(9) State v. Moore, 129 N. C. 497, 55 L. R. A. 96, 39 S. E. 626. This case is sometimes cited as an authority against such evidence.

(10) In State v. Hunter, 143 N. C. 607, 118 Am. St. Rep. 830, 56 S. E. 547, evidence that a thoroughbred bloodhound had tracked and treed one accused of arson was held competent corroborative evidence. The court refers to the "Moore" (cited above) as authority. See also State v. Freeman, 146 N. C. 615, 60 S. E. 986, and State v. Spivey, 151 N. C. 676, 65 S. E. 995, where such evidence is held competent. But see State v. Norman, 153 N. C. 591, 68 S. E. 917, where it was held that bloodhound evidence was inadmissible on account of the proper requirements for its introduction not being shown.

(11) Pedigo v. Com., 103 Ky. 41, 42 L. R. A. 432, 82 Am. St. Rep. 566, 44 S. W. 143.

(12) Attention is called to the vigorous dissenting opinion by Guffy, J., in which he points out the danger of such evidence, which he believes to be too great to justify its use in any case.

set forth have been closely adhered to by the Kentucky courts.[13]

In a recent Kansas case[14] the question was there presented and considered by the Supreme Court. After a review of the authorities, the court decided that no prejudicial error had been committed by the lower court in admitting the evidence of the alleged tracking of the defendant by certain bloodhounds, and approved the lower court's instruction thereon. In the course of its opinion, the court, speaking through West, J., said: "It seems anomalous to confront one charged with murder with the evidence of the way certain dogs acted; that is, with a description of such action by one who observed it. Before such testimony can be of any rightful use, it should appear that the person testifying is reliable; that the dogs whose actions are to be described, were able to scent a track under the given circumstances; and that they did follow such scent or track to or towards the location of the defendant. When all this is established, we then have this conduct from which to draw the inference that the defendant was at the place in question, a lesson in location taught by the exercise of canine instinct. It can be no proof of guilt, only some evidence that the party charged was at the place where the crime was committed, and hence where he could have committed it. Evidence of so uncertain and peculiar a kind should not be received unless and until the court is satisfied that the dogs in question were of such character and training that their conduct should be regarded by the jury as worthy of their consideration."

After reviewing the evidence and remarking as to its uncertainty, the court states that nevertheless it was something which, under proper instructions, might properly go to the jury for such weight and credence as they thought it entitled to. In view of this evidence the court gave the following instructions: "Evidence has come to you tending to prove that some fifteen or sixteen hours after it is alleged the deceased was shot, bloodhounds were put on certain tracks, believed to have been made by the one guilty of the shooting; that they followed him for several miles, ending their trailing at the home of James Huntington, where defendant was staying. Before this evidence can be considered by you as a circumstance tending to connect the defendant with the crime, it must be shown that the particular dogs were and are reliable and accurate and certain in following the trail of human footsteps. So, if you find from the evidence given touching the matter here that they were, and are reliable and accurate in this regard, then the evidence of their work and its result on the dog in question may be considered by you, together with all the other evidence in the case, as a circumstance determining the guilt of the defendant."[15]

In the year 1907 the question was before the Supreme Court of Ohio, and the opinion of the court is an instructive one, dealing with the question very thoroughly.[16] It was a murder case, and the evidence showed that the day after the body of deceased was found that two dogs were brought to the scene of the crime and they were taken to the two saplings between which the neck of the deceased had been found compressed, and they were given a scent from them, and their conduct was described in relation thereto; and it was further shown that they were given the scent of a limb or branch that had been, by someone, broken from one of these saplings. The dogs were to some extent controlled by their owner by means of a leash attached to the collar or

(13) See Sprouse v. Com., 132 Ky. 269, 116 S. W. 344, where a case was reversed on account of admitting bloodhound evidence, without other evidence properly introducing it. See also Allen v. Com., 26 Ky. L. Rep. 808, 82 S. W. 589.

(14) State v. Adams, 85 Kan. 435, 116 Pac. 608, 35 L. R. A. (N. S.) 870.

(15) Note should be made of the dissenting opinion in this case, in which two Justices join.

(16) State v. Dickerson, 77 Ohio St. 34, 13 L. R. A. (N. S.) 341, 122 Am. St. Rep. 479, 82 N. E. 969, 11 A. & E. Ann. Cas. 1181.

harness of the dog. Immediately after the scent of the branch the dog started on his course, which was of a devious character, and finally went to the house of defendant, entered, and went to a room upstairs. He was not at home, but was not far away. The conduct of the dogs, from the giving of the scent to the entrance of the Dickerson house, was submitted to the jury. In presenting the question to the higher court, counsel for defendant (Dickerson) insisted that such evidence was not competent for any purpose, and that it violated constitutional guaranties in favor of the one accused of a crime, and further, if the court considered the above points not well taken, then they insisted that a sufficient foundation or qualification had not been shown to make the conduct of the dogs admissible.

In the opinion delivered by Price J., the court said: "As to the constitutional question, it is sufficient to say that the dogs were not witnesses whom the accused had a right to confront at the trial, in any different sense than the tracks of a man accused may be described as to form, size, or any other characteristic by which he may be identified. It is like the use of a yardstick in measuring goods. The witness is he who used the stick to make the measure, and it is a mere instrumentality. So runs the theory of the state. But we think that from a comparison of the views expressed by the different Courts from whom we have quoted, there may be deducted a rule which, until shown untrustworthy, may be followed in cases where this class of evidence is offered. It is apparent that, before the acts and conduct of the dog can be shown, a proper preliminary foundation must be laid, and, to establish such foundation, it must be shown that the particular dog used was trained and tested in tracking human beings, and by experience had been found reliable in such cases; that the dog so trained was laid on the trail, whether it was visible or invisible, at a point where the circumstances tended clearly to show that the guilty party had been, or upon a track which the circumstances indicated to have been made by him. In addition to this, the reliability of the dog must be proved by a person or persons having personal knowledge thereof. This foundation may be strengthened by proof of pedigree, purity of blood, or the exalted standing of his breed in the performance of such peculiar work."[17]

The cases examined above may be said to be cases in which the right to introduce evidence of trailing by hounds, is upheld with various restrictions thereto. On the other hand several reputable courts have taken the stand that such evidence is not admissible under any circumstances.

The "Brott" case decided by the Supreme Court of Nebraska, is a leading case upon this side of the question.[18] The Court in that case while stating that the conduct of the dogs, might rightly have been admitted in connection with an admission by defendant, as evidence tending to prove that he committed the crime charged, held that it was improper as proof of independent crimes to which the admission did not relate. But in vigorous denunciation of evidence of this character it was said, "That the conclusions of the bloodhound are generally too unreliable to be accepted as evidence in either civil or criminal cases, is, we believe, the teaching of that common knowledge and ordinary experience which we may rightfully bring to the examination of this subject. If such evidence were held to be legal evidence, it would, standing alone, sustain a conviction, and courts, in this golden age of enlightenment, would now and again be under the humiliating necessity of adjudging that some citizen

(17) See the case of Parker v. State, 46 Tex. Crim. Rep. 461, 108 Am. St. Rep. 1021, 80 S. W. 1008, stating the rule in admitting bloodhound evidence. See also Spears v. State, 92 Miss. 613, 16 L. R. A. (N. S.) 285, 46 So. 166, as bearing upon the question of scope of cross-examination allowed in such cases as to former actions of the hounds.

(18) Brott v. State, 70 Neb. 395, 63 L. R. A. 789, 97 N. W. 593.

be deprived of his property, his liberty, or his life, because, forsooth, within twenty-four or forty hours after the commission of a crime, a certain dog indicated by his conduct that he believed the scent of some microscopic particles supposed to have been dropped by the perpetrator of the crime was identified or closely resembled the scent of the person who had been accused and put upon trial. There are, we know, some cases in this country which hold that this kind of evidence is competent, but it seems the judicial history of the civilized world is against them. The bloodhound is, we admit, frequently right in his conclusions, but that he is frequently wrong, is a fact well attested by experience. What he does in trailing may be regarded as the declaration of a disinterested party, but so regarded, the authorities are opposed to its admission. It is unsafe evidence, and both reason and instinct condemn it."

An Iowa case,[19] sometimes cited as an authority against the use of bloodhound evidence, was a case where an action was commenced to recover damages for an unlawful search of plaintiff's premises. The court held that the evidence in such an action as to the conduct of hounds used to track the thief, would only be admissible on the question of malice, in mitigation of damages, and evidence as to the breeding and training of the dogs, conduct in trailing, and stories concerning their ability, were inadmissible.

In an Indiana case[20] there was an attempt made to show that another party, not the defendant, was guilty of the murder, and along with other evidence there was an attempt to show that the sheriff of the county on the day after the murder had procured bloodhounds for the purpose of trailing the perpetrators of the deed, and that in trailing these hounds had run up to the house of the man on whom defendant was attempting to place the guilt. On objection by the state this evidence was excluded. On appeal the lower court's action was sustained, and Jordan, J., speaking for the court, said: "The competency of evidence in a criminal case going to show the trailing of the accused person by bloodhounds may be said to be a debatable question and one depending on the character of such animals, their experience and training, and the conditions and circumstances in each particular case. In regard to the competency of such evidence, it may be said that the authorities fight on both sides of the question." After citing several cases, including the "Brott" case, and quoting from the latter, the court concluded: "The question of the admissibility of such evidence in our jurisdiction has never been decided, but is still open to be determined in the future when properly presented. The court did not err in rejecting the evidence which appellant (defendant) offered to introduce."[21]

In a very recent case[22] upon this subject the Supreme Court of Illinois emphatically places itself along with Nebraska in repudiating the use of evidence of this nature. In that case evidence was admitted in a murder case as to the trailing of one of the horses belonging to the accused. The dog was placed on the trail some thirty hours after it was made. The hound was in charge of one Strumper, who testified as to the natural instinct of bloodhounds to trail human scent, and that every individual or animal had an odor peculiar to himself or itself which would be especially noticeable on the spot where the animal or man touched the ground in walking; that particles of waste matter given off by the particular individual or animal, "from sweat glands or other ducts," remained on the

(19) McClurg v. Brenton, 123 Iowa 368, 65 L. R. A. 519, 101 Am. St. Rep. 323, 98 N. W. 881.

(20) Stout v. State, 174 Ind. 395, 92 N. E. 161, 25 Ann. Cas. 37, and note.

(21) It cannot be said that this decision places Indiana on record as rejecting such evidence, as the court specifically left the question open until such a time as it shall be "properly presented." See also 12 Cyc. 393; 5 Wigmore on Evidence, p. 22.

(22) People v. Pfanschmidt, 262 Ill. 411, 104 N. E. 804.

ground, and while undergoing some chemical change, if they came in contact with the olfactory nerves of the hound, create an impression which he is able to recognize and distinguish from all other impressions. After a careful review of the authorities, the court said: "Furthermore, we have reached the conclusion that testimony as to the trailing of either a man or an animal by a bloodhound should never be admitted in evidence in any case. A bloodhound may be used to track down a known fugitive from justice. If the dog, in fact, takes up and follows the trail of a known fugitive and finds him, or aids his pursuers to find him, there can be no mistake as to whether or not he is the party sought. His guilt or innocence of a given crime, however, should be established by other evidence. Neither court nor jury can have any means of knowing why the dog does this thing or another in following in one direction instead of another; that must be left to his instinct without knowing upon what it is based. The information obtainable on this subject, scientific, legal or otherwise, is not of such character as to furnish any satisfactory basis or reason for the admission of this class of evidence. We agree fully with the statements in Brott v. State, that the 'conclusions of the bloodhounds are generally too unreliable to be accepted as evidence in either civil or criminal cases.' "[23]

After a careful review of the authorities, the writer is more deeply impressed as to the dangerous nature of this class of evidence; and this conclusion is strengthened by the division of the courts in opinions favoring this evidence, and by the rigid restrictions placed thereon by such courts.

(23) It might be said that the court in the "Pfanschmidt" case was not called upon to decide whether evidence as to bloodhounds trailing a man was competent evidence, as the question there involved was that of evidence of a hound trailing a horse. There can be no doubt, however, but that the court meant to repudiate the use of such evidence in either case.

Bloodhounds are seldom used except in cases where grave crimes have been committed and hence the accused's life or liberty is liable to depend upon evidence of this kind.

On account of the unknown exercise of the mysterious power by the hounds, not possessed by man, there is a direct tendency to enhance the impressiveness of the performance, and this influence might tend to prejudice the jurors against the accused.

In such case the dog is really the witness and the evidence would seem to be hearsay from this point of view. There is no certainty in evidence of this character and no satisfactory basis or reason exists either from a scientific or legal standpoint, for its admission. The conclusions of bloodhounds are too unreliable to be accepted as evidence in either criminal or civil cases. Such evidence is at its best of a dangerous and unsafe nature and of no substantial value as a means of arriving at ultimate facts.

In view of the mist of uncertainty surrounding the basis of evidence of this character, is it not best to exclude it entirely?

SUMNER KENNER.

Huntington, Indiana.

DEATH—EYE-WITNESSES.

CASEY v. CHICAGO RYS. CO.

Supreme Court of Illinois. Oct. 27, 1915.

109 N. E. 984.

Though it was necessary, in an action for death from being struck by a street car, to allege and prove that decedent was in the exercise of due care and caution for his own safety, yet, there being no eyewitnesses, exercise of such care could be established by the highest proof of which the case was capable and, absent other circumstances, proof that he was habitually prudent, careful, and cautious, tending to raise the presumption that he was in the exercise of due care and caution at the time, is sufficient.

COOKE, J. Solomon Morris, a boy 8 years and 11 months of age, was found dead upon West Twelfth street, in the city of Chicago, on the night of October 10, 1911, supposedly having been killed by one of the street cars of

the Chicago Railways Company. John D. Casey, administrator of the estate of Solomon Morris, secured a judgment for $2,500 against the Chicago Railways Company for the death of his intestate, in the Circuit Court of Cook county. This judgment was affirmed by the Appellate Court for the First District, and the record of that court has been brought here for review by writ of certiorari.

At the close of defendant in error's case, and again at the conclusion of the whole case, the court overruled the motion of plaintiff in error for a directed verdict, and this action of the court is assigned as error.

The declaration contained eight counts. The first, second, third and sixth counts charged, generally, that the defendant carelessly and negligently drove and propelled its car so that it caused the death of Solomon Morris. The fourth count charged that the car was negligently operated at a high, rapid, and excessive rate of speed, causing the fatality. The fifth count charged the negligence to consist of the failure of the defendant to keep a proper lookout, and the seventh and eighth counts that defendant failed to comply with the provision of an ordinance of the city of Chicago, requiring street cars to be operated at night with brightly lit headlights from the front end of each car.

There were no eye-witnesses, and no witness testified either to what the motorman of the car in question or defendant in error's intestate did, or what either failed to do, prior to or at the time of the occurrence. The body of the deceased was found near the intersection of Lincoln and West Twelfth streets. West Twelfth street, in this section of the city, is an unusually wide street. On the north side of the street, south of the sidewalk, is a paved driveway. Along the south side of this pavement is the west-bound track of the Chicago Railways Company. Immediately south of the track is a parkway, in which are planted small trees and shrubbery. South of the parkway is a broad driveway or boulevard. South of the boulevard is another parkway, and south of that parkway is another paved driveway, on which is located the east-bound track of the Chicago Railways Company. The south rail of the west-bound track of the street railway is located about two or three feet north of the north edge of the parkway. Lincoln street is a north and south street intersecting West Twelfth street. The first street east of Lincoln street which intersects West Twelfth street is Wood street. There is a long block between Lincoln and Wood streets, and in the middle of this block there is a break in the two parkways sufficient to enable teams to drive from the boulevard onto the pavements wherein the street car tracks are located, but the evidence discloses that there is no sidewalk crossing at this break in the parkways for the use of pedestrians. The next street east of Wood street which intersects West Twelfth street is Paulina street. The first street south from West Twelfth street is Washburn avenue, which runs east and west. The deceased lived with his parents on Washburn avenue, near the corner of that avenue and Wood street. He left his home on the evening in question about 8 o'clock, in company with his sister. They went on Washburn avenue to Wood street, and from Wood street to the southeast corner of Wood and Twelfth streets, where the deceased stopped and entered into a game with some little boys of his acquaintance. His sister remained with them until about 8:30 o'clock, when she returned home. After she left, deceased went with one of the boys with whom he had been playing to the northeast corner of Paulina and Twelfth streets, where they remained for a few minutes. The boy who accompanied the deceased then went into a moving picture theater located there, and that is the last time anyone saw the deceased alive. His body was found near the intersection of Lincoln and Twelfth streets, about two blocks west of where he was last seen alive. From the condition of the south rail of the west-bound track it was evident that the body had been dragged from a point near the break in the parkway, in the middle of the block between Lincoln and Wood streets, to a point beyond the intersection of Lincoln and Twelfth streets. The body was found about 11 o'clock that evening, and upon the matter being reported to the offices of the railways company, an examination of the Twelfth street cars was made as they came into the barn, and the only car which showed any evidence of having come in contact with any body on that evening was car No. 4297. This was a small car, known as a single-truck car. Around the truck is built a guard rail. Upon the guard rail, on the side of the car which would be next the parkway as it traveled west on West Twelfth street, and upon the brake shoe on that side of the car, blood and some particles of flesh were found. The records of the company, together with the testimony of the motorman of this car, disclosed that this car passed Wood and Lincoln streets on the night in question about 9:40 o'clock, and if this is the car which caused the death of the deceased, he was killed at that time, as on the next trip the car

was blocked at that point about 11 o'clock as the result of the previous finding of the body.

[1] There being no eye-witnesses and no facts susceptible of being proven which would in any way disclose how the fatality occurred, defendant in error proved the habits of the deceased as to care, caution and prudence, as tending to raise the presumption that he was in the exercise of due care and caution for his own safety at the time he was killed. Plaintiff in error contends that this proof was not sufficient to show that deceased was in the exercise of ordinary care for his own safety, and insists that mere proof of the habits of the deceased, without proof of other circumstances upon which to predicate care in the particular case under investigation, is not sufficient to establish the exercise of ordinary care. It was necessary for defendant in error to allege and prove that his decedent was in the exercise of due care and caution for his own safety at the time of the accident. In cases where there are no eye-witnesses to the occurrence this allegation cannot be proven by direct testimony, but it still devolves upon the parties seeking recovery to establish the exercise of ordinary care on the part of the deceased by the highest proof of which the case is capable. Collison v. Illinois Central Railroad Co., 239 Ill. 532, 88 N. E. 251; Stollery v. Cicero & Proviso Street Railway Co., 243 Ill. 290, 90 N. E. 709; Newell v. Cleveland, Cincinnati, Chicago & St. Louis Railway Co., 261 Ill. 505, 104 N. E. 223. The highest proof of which the case is capable may consist of other circumstances than the habits of the deceased which would tend to raise the presumption that the deceased was in the exercise of due care and caution at the time for his own safety. Where it is possible, such circumstances must be shown. The absence of such circumstances does not preclude a plaintiff, however, and if the case is not susceptible of any higher proof, then the presumption that the deceased was in the exercise of ordinary care and caution for his own safety at the time of the accident is sufficiently raised by proof that he was habitually careful, prudent and cautious in his conduct. If the deceased was habitually prudent, careful and cautious, it tended to raise the presumption that he was in the exercise of due care and caution at the time he received the injury which resulted in his death. Chicago, Rock Island & Pacific Railway Co. v. Clark, 108 Ill. 113; Toledo, St. Louis & Kansas City Railroad Co. v. Bailey, 145 Ill. 159, 33N. E. 1089. As the proof made relative to the habits of the deceased tended to raise this presumption, it was sufficient to go to the jury.

Reversed and remanded.

FARMER, C. J., dissenting.

NOTE.—*Reputation for Carefulness Admissible Evidence of Death from Negligence in Absence of Direct Evidence.*—The question treated in the instant case has appeared more often in Illinois decision than in that of any other state. But other cases have ruled in the same way and with like ruling on admissibility of evidence, that is, it cannot supplement or rebut testimony of eyewitnesses upon the theory that it introduces a collateral inquiry only excusable where there is no direct evidence upon the question as to how a death came about.

Thus there are several cases from New Hampshire. One of these held that a woman's fear of a railroad's crossing where she was later killed and that she then was driving a safe horse was allowed to be shown. Evans v. Concord R. Corp. 66 N. H. 194, 21 Atl. 105. In another case, specific instance of the decedent stopping, looking and listening the day before at the crossing where he was killed was held admissible. Lyman v. Boston & M. R. Co., 66 N. H. 200, 20 Atl. 976, 11 L. R. A. 364. In this case the opinion said: "The rule of the burden of proof is on the plaintiff to prove his exercise of proper care is easily satisfied. * * * It even may, under some circumstances, be inferred from the ordinary habits and dispositions of prudent men and the instinct of self-preservation." For this are cited Johnson v. Hudson River R. Co., 20 N. Y. 65; N. C. R. Co. v. State, 29 Md. 420, 428, 31 Md. 357; C. & P. R. Co. v. Rowan, 66 Pa. 393; Weiss v. Penna. R. Co., 79 Pa. 387; Pierce, Railroads, 299. There is no discussion about the evidence showing a specific instance of care.

Davis v. Concord & M. R. Co., 68 N. H. 247, 44 Atl. 388; Smith v. Boston & M. R. Co., 70 N. H. 82, 47 Atl. 85, Am. St. Rep. 596; Tucker v. B. & M. R. Co., 73 N. H. 132, 59 Atl. 943, follow in the same line.

A Kansas case held that the fact that a man killed was careful and sober and had previously exercised due care at the place where he was killed, tended to repel any inference of negligence on his part. Mo. Pac. Ry. Co. v. Moffat, 60 Kan. 113, 55 Pac. 837, 72 Am. St. Rep. 343.

In Cassidy v. Angell, 12 R. I. 447, 34 Am. Rep. 690, habits and caution of one found dead in an excavation were allowed to be proven.

On the other hand, it has been held that there must be some evidence direct or indirect that defendant was guilty of negligence and it is not sufficient merely to show habits and prudence of deceased as showing such negligence. Thus it was held in Morris v. East Haven, 41 Conn. 252, that evidence that deceased was a careful and prudent driver was irrelevant as to his care at the time of an accident, it being at most but the expression of opinion.

In Fronnfelker v. D. L. & W. R. Co., 62 N. Y. Supp. 840, 48 App. Div. 206, an instruction that the jury might regard testimony that deceased was a careful man was error as to whether he complied with a rule of defendant applicable to care.

In Gray v. R. Co., 143 Iowa 268, 121 N. W. 1097, it is conceded that there might be circum-

stances, in the absence of direct testimony, where evidence of the general habit of a deceased might be shown, but this did not let in evidence of specific instances of care.

And *semble* it could not be shown that the habit of decedent falling asleep at a crossing by evidence of his being found asleep in his buggy on particular occasions. Dalton v. R. Co., 114 Iowa 257, 86 N. W. 272.

In Zucker v. Whitridge, 205 N. Y. 50, 98 N. E. 209, there is very elaborate consideration given to the question of rebuttal of the inference of contributory negligence by decedent by showing his customary manner of crossing a railroad track. The conclusion was that the evidence should be held incompetent. It was said: "The rule of the average life is care, or else it would not long continue, yet the average man is conscious that he is not always careful, and, hence, habit on general occasions is uncertain evidence of care on a particular occasion. It is not enough of itself to establish the fact sought to be proved and at the most simply bears upon the probability. Habit is an inference from many acts, each of which presents an issue to be tried and necessarily involves direct and naturally invites cross examination. * * * From the want of previous notice, the other party would not be prepared to meet such evidence, and after all the testimony of this character was in, the fact would remain that as no one is always careful, the subject of inquiry, although careful on many occasions, might have been careless on the occasion in question." To indulge in refinements of this character would exclude much evidence of a nature generally accepted by courts. We do not look for certainty of proof in any investigation.

C.

JETSAM AND FLOTSAM.

"FIVE TO FOUR."

The shades of night were falling free
When up from Washington, D. C.,
There came decrees, all handed down
By Judges wrapped in black silk gown—
"Five to four."
The income tax? They pondered late
And argufied with learning great;
They seized their pens and gravely wrote
Opinions—then they took the vote—
"Five to four."

The merger? 'Twas a famous case,
Each Judge sat there with solemn face,
And heard the argument so keen,
When the decision came 'twas seen—
"Five to four."

Our wards beyond the deep blue sea?
Ah, surely here they will agree!
But after rods of legal lore,
Behold the spectacle once more—
"Five to four."

A law to safeguard human life,
To care for orphans and for wife;
Ah, Judges on that will agree!
But there's the record—look and see—
"Five to four."

—Commoner.

HUMOR OF THE LAW.

When the donkey saw the zebra
He began to switch his tail;
"Well I never," was his comment;
"There's a mule that's been in jail."
—The Horse Lover.

A lawyer who was sometimes forgetful, having been engaged to plead the cause of an offender, began by saying: "I know the prisoner at the bar, and he bears the character of being a most consummate and impudent scoundrel." Here somebody whispered to him that the prisoner was his client, when he immediately continued: "But what great and good man ever lived who was not calumniated by many of his contemporaries?"—Case and Comment.

An action was brought against a farmer for having called another a rascally lawyer. An old husbandsman, being a witness, was asked if he heard the defendant call the plaintiff a lawyer.

"I did," was the reply.

"Pray," said the judge, "what is your opinion of the import of the word?"

"There can be no doubt of that," replied the fellow.

"Why, good man," said the judge; "there is no dishonor in the name, is there?"

"I know nothing about that," answered he, "but this I know, if a man called me a lawyer I'd knock him down."

"Why, sir," said the judge, pointing to one of the counsel, "that gentleman is a lawyer, and that I, too, am a lawyer."

"No, no," replied the fellow; "no, my Lord; you are a judge, I know; but I'm sure you are no lawyer."—Wit and Wisdom.

At a dinner-and-theater party recently given in Washington, a beautiful debutante was frightened beyond measure because Senator Blank had been selected for her escort. The poor girl was almost in tears from nervousness.

"But, mother," she protested, "whatever can I talk to him about?"

The mother smiled. "You'll like him, dear; everyone does."

It was late that night when the debutante came running into her mother's boudoir, a happy flush on her young cheek. "I've had a perf ctly dandy time," she announced, "and I think the Senator's fine. He isn't at all like I expected him to be. Why, we hadn't gone two blocks before we were talking about fleas in Italian hotels.—Everybody's.

WEEKLY DIGEST

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1. **Abatement and Revival**—Costs.—The rule that a suit will be abated, if plaintiff fails to pay the costs of a former suit on the same cause of action, does not apply where one suit is in a state court and the other in the United States court.—Perry v. Constitution Pub. Co., Ga. App., 86 S. E. 93.

2.——Personal Action.—A cause of action for malicious personal injury by shooting abates on the death of the wrongdoer, committing suicide immediately after the shooting.—Brown v. Wightman, Utah, 151 Pac. 366.

3. **Assignments**—Record.—In South Carolina, assignments of notes, mortgages, and open accounts as collateral security held not required to be recorded, to be valid as against subsequent creditors or purchasers.—In re Floyd & Hayes, U. S. D. C., 225 Fed. 262.

4. **Attachment**—Possession of Premises.—A sheriff levying upon personal property has the right to the temporary possession of the premises long enough for him, with reasonable diligence, to inventory and remove for storage the property levied upon.—In re Bradley, U. S. D. C., 225 Fed. 307.

5.——Return.—Where an attaching officer made numerous separate attachments on the same property, the fact that he made a sufficient return upon one of the writs did not preserve the attachment as to the others.—Bass v. Dumas, Me., 95 Atl. 286.

6. **Bankruptcy**—Adjudication.—Where a creditor asserted that he had received goods from a bankrupt in payment of his debt, and refused consent to a summary adjudication, the referee is without jurisdiction, under Bankr. Act, § 23b, and must remit the trustee to a plenary suit.—In re Vallozza, U. S. D. C., 225 Fed. 334.

7.——Claim.—Where a bankrupt, on full consideration paid before bankruptcy, contracted to absolutely pay the claimant $3 per day during the remainder of his life, the claim was fixed and provable, under Bankr. Act, § 63a, and the mortality tables might be used to determine the claimant's life.—In re Miller, U. S. D. C., 225 Fed. 331.

8.——Conditional Sale.—Under Rem. & Bal. Code, Wash., § 3670, a memorandum of conditional sale containing printed name of seller, with nothing to show its adoption as signature of the seller, held not to reserve title in him as against buyer's trustee in bankruptcy.—In re Frankel, U. S. D. C., 225 Fed. 129.

9.——Expenses.—Claim of one employed by a corporation to investigate its operations, who after its bankruptcy reported thereon to its directors as instructed by them, held properly disallowed as a claim for compensation for services in the administration of the bankrupt estate.—In re Union Dredging Co., U. S. D. C., 225 Fed. 188.

10.——Expenses.—Only those fees, charges, and expenses necessary for the preservation of the property and the foreclosure of the lien may be charged against the fund realized from the sale without the consent of the lienholder of a bankrupt's property subject to the lien, made free from liens.—In re New York & Philadelphia Package Co., U. S. D. C., 225 Fed. 219.

11.——Insurance Policies.—Under Bankr. Act, § 70a (5), the beneficial interest in insurance policies on the life of a bankrupt held to pass to his trustee, notwithstanding Act Pa. April 15, 1868 (P. L. 103), and that the policies named the bankrupt's daughter as beneficiary.—In re Shoemaker, U. S. D. C., 225 Fed. 329.

12.——Jurisdiction.—Custody of property by the bankruptcy court, though acquired by agreement of the person in possession, nevertheless confers jurisdiction to have and determine claims to the ownership thereof.—In re Traunstein, U. S. D. C., 225 Fed. 317.

13.——Lex Loci.—Where a seller in one state delivered goods to a buyer in another state, title thereto, as between the seller and the trustee in bankruptcy of the buyer, is governed by the laws of the state of the buyer.—In re O'Callaghan, U. S. D. C., 225 Fed. 133.

14.——Preference.—Payments made by an insolvent to his landlord within four months of his adjudication in bankruptcy, and applied by the landlord, not to rent for the current year, but to rent in arrears, constitutes a preference.—In re Louis J. Bergdoll Motor Co., U. S. D. C., 225 Fed. 87.

15.——Preference.—Under Bankr. Act, § 47, as amended in 1910, section 60a, as amended in 1903, section 60b, as amended in 1910, a mortgage required by Kirby's Dig. Ark. §§ 5395, 5396, 5407, to be recorded, must be treated as executed when first filed for record, as against the mortgagor's trustee in bankruptcy, so that where this was within four months before petition and the mortgagor was then insolvent, it was a preference.—In re T. H. Bunch Commission Co., U. S. D. C., 225 Fed. 243.

16.——Preference.—Under Bankruptcy Act July 1, 1898, § 60b, as amended by Act Feb. 5, 1903, § 13, and Act June 25, 1910, § 11, to create

a preference by taking security, a creditor must have had reasonable cause to believe that when security was taken the debtor was then insolvent.—In re Gaylord, U. S. D. C., 225 Fed. 234.

17.——Tenancy in Common.—Tenant in common held entitled to make claim for priority of payment of rent due from bankrupt lessee; his co-tenant having no interest in the rent due.—In re W. R. Kuhn, U. S. C. C. A., 225 Fed. 13.

18. **Bills and Notes**—Surety.—That the surety on a note had let one joint maker thereof have money for which he received more than the legal rate of interest held insufficient to charge him with notice that the other joint maker was a mere surety or to show that the lender's relation to the paper was that of a joint maker with a borrower.—Frye v. Sims, Ga., 86 S. E. 249.

19.——Waiver.—Indorsee of a note, obtaining judgments against maker and indorser, held not to forfeit any lien against maker by seeking to collect judgment against indorser.—Hudson Trust Co. v. Elliott, Ala., 69 So. 631.

20. **Boundaries**—Estoppel. — Where, within three years after her purchase, plaintiff instituted a suit to quiet her title to land embraced within defendant's fence, defendant could not, though the suit was twelve years later dismissed for want of prosecution, contend, a second suit being promptly instituted, that there was an agreed boundary line by acquiescence.—Moyle v. Thomas, Utah, 151 Pac. 361.

21. **Carriers of Goods**—Initial Carrier.—Under the Carmack amendment, making the initial carrier agent of all connecting carriers, held, notice to the initial carrier of claim for delay on the line of a connecting carrier is enough, the contract to the contrary.—Norfolk & W. Ry. Co. v. A. J. Steele & Son, Va., 86 S. E. 124.

22.——Limitation of Liability.—Provision of a live stock shipment, limiting carrier's liability to agreed valuation, does not relieve it of all liability, if the cattle sell for as much as the agreed value.—Norfolk & W. Ry. Co. v. A. J. Steele & Son, Va., 86 S. E. 124.

23. **Carriers of Passengers**—Alighting From Train.—Where one alights from a moving train by order of the conductor, the consequences will be imputed to the company; but where plaintiff jumps from a moving train without any such order, he assumed the risk.—Gosnell v. Central of Georgia Ry. Co., Ga. App., 86 S. E. 90.

24.——Ejection.—Passenger, wrongfully ejected in desolate country, forced to walk to destination, and made ill thereby, can recover for humiliation, wrongful expulsion, and damages for enforced walk.—Sawyer v. Norfolk Southern R. Co., N. C., 86 S. E. 166.

25.——Mental Suffering.—A passenger may recover for mental suffering caused by indecent language of fellow passengers which might have been prevented by the trainmen.—Seaboard Air Line Ry Co. v. Mobley, Ala., 69 So. 614.

26.——Negligence.—A passenger, who exercised due diligence in ascertaining whether a car was crowded, it appearing that there was no available space inside, though there was standing room, was not negligent in riding on the platform.—Southern Ry. Co. v. Hayes, Ala., 69 So. 641.

27.——Rebates.—An agreement to give a theatrical company rebates in consideration of routing its shows over defendant's railroad, which ran between two points in the United States, though part of the line lay in Canada, was in violation of Interstate Commerce Act, § 6.—United States v. Grand Trunk Ry. Co. of Canada, U. S. D. C., 225 Fed. 283.

28. **Chattel Mortgages**—Crop Liens.—A second crop mortgagee, who receives crops in satisfaction of his mortgage, with knowledge of the prior lien, having placed the property out of reach of execution, is liable to the first mortgagee for the value of the property.—Todd v. Hurst Supply Co., Ga. App., 86 S. E. 255.

29. **Commerce**—Federal Employers' Liability Act.—An employe coaling engines on interstate railroad and serving interstate and intrastate trains is engaged in interstate commerce within federal Employers' Liability Act.—Southern Ry. Co. v. Peters, Ala., 69 So. 611.

30.——Federal Employers' Liability Act.—A railroad employe, killed while repairing a switch engine temporarily withdrawn from service, and used both for intrastate and interstate commerce, held "engaged in interstate commerce" within the Employers' Liability Act.—Southern Pac. Co. v. Pillsbury, Cal., 151 Pac. 277.

31. **Conspiracy**—Overt Act.—Where the jurisdiction of the court depends solely upon an overt act alleged in an indictment for conspiracy, it must be alleged with all the certainty of any other jurisdictional fact, and the connection between the overt act and the conspiracy must be made to appear specifically.—Tillinghast v. Richards, U. S. D. C., 225 Fed. 226.

32.——Pleading.—Where an overt act alleged in an indictment for conspiracy must be qualified by circumstances to make it relevant to the particular conspiracy charged, it should be pleaded with the circumstances which make it relevant.—Tillinghast v. Richards, U. S. D. C., 225 Fed. 226.

33. **Constitutional Law**—Discrimination.—Automobile Act (Acts 1911, p. 649) § 34, providing that contributory negligence of persons operating automobiles shall be imputed to occupants thereof, but not to passengers paying fare, held to deny equal protection of the law, because discriminatory. — Birmingham-Tuscaloosa Ry. & Utilities Co. v. Carpenter, Ala., 69 So. 626.

34.——License Tax.—Act Ala. April 6, 1911, regulating the sale of liquors and imposing a license tax on agencies of foreign breweries in the state, held constitutional.—Evansville Brewing Ass'n v. Excise Commission of Jefferson County, Ala., U. S. D. C., 225 Fed. 204.

35.——Segregation of Races.—Ordinance for segregation of races within a municipality does not deny to any person equal protection of the laws.—Hopkins v. City of Richmond, Va., 86 S. E. 139.

36.——Statutes.—While the legislative power over municipal corporations is ordinarily uncontrollable by the courts, where the Legislature clearly devotes public funds to a private object, the judiciary will declare its action invalid.—Wolcott v. Mayor and Council of Wilmington, Del., Ch., 95 Atl. 303.

37.——Workmen's Compensation Act.—Workmen's Compensation Act, enacting a new system of rights and obligations as between employer and employe, governing liability for injury to employes, held not to deprive the employer of liberty or property without due process of law.—Western Indemnity Co. v. Pillsbury, Cal., 151 Pac. 398.

38. **Contracts**—Building Contract.—Ordinarily a provision in a building contract specifying a definite time within which a structure should be completed is to be construed as meaning that the time specified has reference to the building proper, and that it shall on the expiration of such time be ready for occupancy.—Giberson v. Fink, Cal. App., 151 Pac. 371.

39.——Implied Agreement.—A contract to furnish material necessary for the completion of a building includes an agreement to pay for the materials.—Rust v. United States Fidelity & Guaranty Co., Wash., 151 Pac. 248.

40.——Renunciation.—Where a party renounced a contract before time for performance, adverse party could not perform and sue for contract price, but could only recover damages up to time of notice of renunciation.—Thomas v. Clayton Piano Co., Utah, 151 Pac. 543.

41.——Restraint of Trade.—A contract prohibiting a person from practicing dentistry in the town of S. for five years could not be construed to permit the opening of an office in S. for the treatment of patients outside of S.—Locke v. Murdoch, N. M., 151 Pac. 298.

42.——Restraint of Trade.—A party who seeks to enforce a contract not to engage in a certain business in a certain vicinity for a specified time must show that it is reasonable.—Klaff v. Pratt, Va., 86 S. E. 74.

43. **Corporations**—Ratification.—The resolution of stockholders, accepting surrender of one's common stock in consideration of preferred stock, is fatal to his assertion of a fur-

ther consideration of cancellation of his prior subscription for preferred stock; he having been a party to ,and signed and ratified, the resolution.—Silica Brick Co. v. Winsor, Cal., 151 Pac. 425.

44.——Ratification.—A contract made by the secretary of a corporation, with the approval of the treasurer making payments thereunder, they being a majority of the directors, held binding on the corporation.—Meem, Haskins & Mitchell v. Big Ax Pocahontas Coal Co., Va., 86 S. E. 118.

45.——Unpaid Subscription.—It is a condition precedent to a right of a receiver of an insolvent corporation to sue for an unpaid subscription that the subscriber have an opportunity to be heard on the validity of claims against the corporation and that an order directing suit against him be entered.—Rea v. Eslick, Wash., 151 Pac. 256.

46. **Criminal Law** — Accomplice. —Where it does not appear that a person knowingly, voluntarily, and with common intent with the alleged principal offender, united in the commission of the crime charged, such person is not an accomplice.—Ex parte Bowman, Nev., 151 Pac. 517.

47. **Damages**—Proximate Cause.—Where a servant was injured so that his foot finally had to be amputated, and second operation was the proximate cause of the injury, he is entitled to recover damages for the results of the second operation.—Sears v. Atlantic Coast Line R. Co., N. C., 86 S. E. 176.

48. **Death**—Action for.—Where the death of a man results from the crime of another, his widow may, under Civ. Code 1910, §§ 4424, 4425, recover.—Davis v. Davis, Ga., 86 S. E. 248.

49. **Divorce**—Custody of Child.—A Nevada decree for divorce and alimony, awarding the custody of a child, will not be declared void to toto in an action in Georgia, though at the time of its rendition the child resided in Georgia.—Schroeder v. Schroeder, Ga., 86 S. E. 224.

50. **Easements**—Reservation.—Reservation in a deed of right to build railroads through the land to lands "beyond and above" for mining purposes held to include lands then owned or subsequently acquired by the grantor and lands not acquired by him, but essential to utilization for mining of his lands.—In re Oak Leaf Coal Co., U. S. D. C., 225 Fed. 126.

51. **Ejectment**—Equitable Title.—One holding a valid contract for a deed, and having fully complied with its conditions, has such an interest as will enable her to maintain ejectment against one in possession claiming the land under the same contract for a deed.—Landrum v. Landrum, Okla., 151 Pac. 479.

52. **Eminent Domain**—Estoppel.—Where a landowner, knowing the facts, permits a railroad company to construct its track on his land and operate a railroad thereon, he acquiesces in the construction.—Central of Georgia Ry. Co. v. Standard Fuel Supply Co., Ga., 86 S. E. 228.

53.——Servitude.—A street railway does not, under common-law principles, impose an additional servitude on the street, for which abutting owners are entitled to compensation, by laying an additional track therein.—Williams v. Meridian Light & Ry. Co., Miss., 69 So. 596.

54. **Estoppel**—Application for Dismissal of Suit.—A defendant, who has objected to an application for dismissal, is estopped to complain of the withdrawal of the application on the ground that he may be required to pay costs previously accrued, which on dismissal would be taxable against complainant.—Ex parte Johnson, Ala., 69 So. 603.

55. **Exchange of Property**—Liability.—Where plaintiff, in making a trade of horses, dealt with the several owners as individuals, they cannot escape liability for boot money on the ground that his first proposal was that, if all the parties interested in the horse would not agree to the sale, it should not be consummated.—Rocky Mountain Stud Farm Co. v. Lunt, Utah, 151 Pac. 521.

56. **Executors and Administrators**—Legacy.—While an executor's assent to a legacy will be implied if he allows a legatee to remain in possession of the property, such assent will not be implied because the executor and legatee, who are mother and son, occupied the same house and had control of the personalty.—Johnson v. Thomas, Ga., 86 S. E. 236.

57. **Fraud**—Prospectus.—That an oil company's prospectus was based upon an expert's report on the property was no defense to suit for misrepresentation, unless defendants were entitled to rely on the report.—Neff v. Mattern, Cal. App., 151 Pac. 382.

58. **Gaming**—Mortgage.—A mortgagee held entitled to foreclose the mortgage, where the loan secured thereby had been legitimately used and no part thereof had been devoted to gambling purposes, although such was the mortgagee's intention.—Dinkelspeel v. O'Day, Utah, 151 Pac. 344.

59. **Gas**—Burden of Proof.—A gas company has the burden of proving freedom from negligence, where an explosion of gas setting fire occurred while its servant was letting out gas in a house, to get water from a pipe.—Willard v. Valley Gas & Fuel Co., Cal., 151 Pac. 286.

60. **Homicide**—Dying Declarations.—Where deceased had not been told he was going to die, and had merely said he would never get up, evidence of a purported dying declaration that accused fired the fatal shot is inadmissible.—Snell v. State, Miss., 69 So. 593.

61. **Husband and Wife**—Community Debt.—A husband, becoming an indemnitor of surety, held not to have created a community debt, and under the laws of Washington, community property was not liable.—American Surety Co. of New York v. Sandberg, U. S. D. C., 225 Fed. 150.

62.——Community Property.—While a husband's contract of subscription to the capital stock of a corporation was a community debt, failure to present claim against the community estate, after death of the wife, did not affect his separate liability.—Rea v. Eslick, Wash., 151 Pac. 256.

63.——Duress.—A married woman, pledging under duress her property for a debt of her husband, held to recognize validity of pledge by thereafter demanding and receiving surrender of draft given by husband in payment of part of claim.—Knowlton v. Ross, Me., 95 Atl. 281.

64. **Infants**—Emancipation.—That the parents allow their child to live away from them and receive wages for his work, from which he pays his expenses, does not emancipate the child, in the absence of intention on the part of the parents.—Daniel v. Atlantic Coast Line R. Co., N. C., 86 S. E. 174.

65. **Injunction**—Adequate Compensation.—Injunction lies to restrain one party to a contract from carrying on a business or profession for a limited time which the party agreed not to carry on, on the ground that the parties cannot be placed in statu quo and that damages afford no adequate compensation to the injured party.—Locke v. Murdoch, N. M., 151 Pac. 298.

66.——Status Quo.—Where, in an action to enjoin a railroad company from making certain changes on the right of way over plaintiff's land, the extent of the easement depended on disputed facts, it was not error to preserve the status pendente lite.—Central of Georgia Ry. Co. v. Standard Fuel Supply Co., Ga., 86 S. E. 228.

67. **Insurance**—Classifying Risks.—Where a clerk was shot while hunting, under a policy providing that for injury while in more hazardous occupation, classifying hunting as such, the amount payable would be somewhat less than otherwise, held, the less amount only could be recovered.—Green v. National Casualty Co., Wash., 151 Pac. 509.

68.——Estoppel.—Where a fraternal benefit association has led a member to believe that prompt payment of assessments will not be insisted upon, the member will be deemed to be in good standing for such reasonable time after delinquency as was customarily allowed him in which to pay.—Head Camp, Pacific Jurisdiction, Woodmen of the World, v. Bohanna, Colo., 151 Pac. 428.

69.——Forfeiture.—Where a forfeiture is insisted upon, insurer must inform itself as to its rights in that regard within at least some reasonable time, or to be deemed to have waived its right to a forfeiture.—Moran v. Knights of Columbus, Utah, 151 Pac. 353.

70. **Joint-Stock Companies**—Joint Owners.—Where a number of individuals purchased a horse, each owning a share in the animal according to the amount he paid, the owners did not constitute a joint-stock company.—Rocky Mountain Stud Farm Co. v. Lunt, Utah, 151 Pac. 521.

71. **Landlord and Tenant**—Estoppel.—An assignee of a landlord's lien for supplies "without recourse," who neglects to foreclose on maturing of crop, cannot force the landlord to apply to the lien any proceeds of the crop in the landlord's hands due as wages to the cropper.—Lyon v. Griffin, Ga. App., 86 S. E. 86.

72.——Fraud.—A lease for a lump sum for the lives of the lessees held not fraudulent because, through their early death, resulting to the lessor's advantage.—Fulton v. Cox, Va., 86 S. E. 133.

73.——Lien on Crops.—Where the rent is payable in money and the landlord receives crops in satisfaction of the rent debt, he takes them subject to the lien of an older judgment, and must assert the priority of his lien for rent by foreclosing it and claiming the proceeds of the sale of the crops.—Carr v. Morris, Ga. App., 86 S. E. 94.

74.——Surrender.—The tenant's surrender of the key of premises on demand of a sheriff attaching his personal property was not a surrender of the premises, nor was the sheriff's acceptance of the key in the presence of the landlord's agent an acceptance of a surrender.—In re Bradley, U. S. D. C., 225 Fed. 307.

75. **Licenses**—Penalty.—Auctioneer, sued for penalty for carrying on business without a license, could defend on the ground he was employe of another, who was licensed, only if the arrangement was in good faith.—Kimmins v. City of Montrose, Colo., 151 Pac. 434.

76. **Master and Servant**—Anticipation of Injury.—The master is required to foresee and guard against only usual and probable danger, and so not against that of a minor being caught in an air course by a runaway car.—Clinchfield Coal Corporation v. Cruise's Adm'r, Va., 86 S. E. 135.

77.——Fellow Servant.—One who complains of injuries from incompetency of his fellow servant must overcome by direct proof the presumption that the master exercised ordinary diligence in his selection.—Kilgo v. Rome Soil Pipe Mfg. Co., Ga. App., 86 S. E. 82.

78.——Foreign Statute.—When a statute of a foreign jurisdiction is pleaded as the basis of a servant's action, the statute is given the construction adopted by the courts of that jurisdiction.—Hicks v. Atlantic Coast Line R. Co., Ga. App., 86 S. E. 250.

79.——Respondeat Superior.—Act of railroad employe, working at a coal chute coaling interstate engines in lifting wheel of a coal buggy out of a hole in the floor over which he was wheeling coal, held independent act relieving company from liability for negligence.—Southern Ry. Co. v. Peters, Ala., 69 So. 611.

80.——Respondeat Superior.—Plaintiff, the assistant manager, who was in charge of the machinery of a cotton gin, held not entitled to recover for injuries caused by a bale of cotton thrown by those under his control onto a platform contrary to orders.—Gregory v. Eastern Cotton Oil Co., Md., 86 S. E. 162.

81.——Workmen's Compensation Act.—Under Workmen's Compensation Act, § 12, held, that foreman of section gang, hurt in a difficulty growing out of his efforts to have work properly done and to maintain his authority, was injured by an accident in the course of his employment.—Western Indemnity Co. v. Pillsbury, Cal., 151 Pac. 398.

82. **Marriage**—Common Law Marriage.—Cohabitation of divorced husband and wife, without remarriage, for four and one-half years, until death of husband, held valid common-law marriage.—In re Matteote's Estate, Colo., 151 Pac. 448.

83. **Mortgages**—Possession.—Where a second mortgagee obtained a conveyance of the equity of redemption from the owner and entered into possession, he was not a mortgagee in possession and bound to account to the other lienholders for rents received.—Stoeckel v. Roesenheim, Del. Ch., 95 Atl. 300.

84. **Municipal Corporations**—Abandonment.—A mere nonuser of a portion of a street fenced in with abutting property is not an abandonment of the street by the public.—Sipe v. Alley, Va., 86 S. E. 122.

85.——Constitutional Law.—A statute purporting to authorize a municipality to pay extra compensation to an assessment board for extra services is unconstitutional, as constituting an appropriation of money to an individual, contrary to the provisions of Const. art. 8, § 8.—Wilcott v. Mayor and Council of Wilmington, Del., Ch., 95 Atl. 303.

86.——Ministerial Duty.—Where public buildings are operated for profit, in the exercise of which operation the city is performing a ministerial duty, it must use the same care that is required of a private owner with respect to invitees upon his premises.—City of Norfolk v. Anthony, Va., 86 S. E. 68.

87.——Ratification.—Where a city has power to enter into a contract only in a particular form, or mode, it can ratify an unauthorized contract only by following the same form or mode.—City of Astoria v. American La France Fire Engine Co., U. S. C. C. A., 225 Fed. 21.

88. **Negligence**—Contributory Negligence.—Pleas of contributory negligence of one injured in a collision with train while riding in an automobile held demurrable, for failing to allege that plaintiff controlled the automobile or driver thereof.—Birmingham-Tuscaloosa Ry. & Utilities Co. v. Carpenter, Ala., 69 So. 626.

89. **Parent and Child**—Neglect.—In a prosecution against a father for willfully neglecting to support his child, evidence by his divorced wife, in whose care the child was, that he could not help knowing that they had nothing to eat was erroneous.—Laws v. People, Colo., 151 Pac. 433.

90. **Partnership**—Joint Owners.—Where a number of individuals purchased a horse, each owning a share in the animal according to the amount he paid, the owners did not constitute a partnership.—Rocky Mountain Stud Farm Co. v. Lunt, Utah, 151 Pac. 521.

91. **Pleading**—Burden of Proof.—Under Harrison Anti-Narcotic Law, § 8, upon proof that defendant was doing any of the things mentioned in section 1, cl. 1, he is presumptively guilty if a narcotic is found in his possession, when the burden is upon him to show affirmatively that he is not within the prohibition of the act.—United States v. Wilson, U. S. D. C., 225 Fed. 82.

92. **Principal and Agent**—Holding Out.—A principal must at some point of time ascertain whether the business acts of his agent are authorized, and, in case there is neither fraud, concealment, nor misrepresentation, and the rights of third persons are involved, must assert his right to repudiate unauthorized acts within a reasonable time or remain silent.—Moran v. Knights of Columbus, Utah, 151 Pac. 353.

93. **Principal and Surety**—Privity.—Under contractor's bond, held, that owner who had taken over and completed the work, could not maintain an action for the benefit of the contractor's creditors, to whom he was in no way liable, since he stood in no privity with them.—Rust v. United States Fidelity & Guaranty Co., Wash., 151 Pac. 248.

94. **Railroads**—Look and Listen.—One approaching a railroad track must take advantage of every reasonable opportunity to look and listen, and cannot omit to look and listen because he has heard no appropriate signals of the approach of a train, even though the law requires such signals to be given.—Griffin v. San Pedro, L. A. & S. L. R. Co., Cal., 151 Pac. 282.

95.——Negligence.—Defendant railroad, whose engine, running backward across a street crossing without signals, struck plaintiff, brakeman of another road, whose track ran parallel to defendant's, who was signaling his own engineer, was liable to plaintiff.—Florence & C. C. R. Co. v. Kerr, Colo., 151 Pac. 439.

96. **Receivers**—Expenses.—A receiver of a brewing company, who was also in the wholesale liquor business and distributed the company's product, is not entitled to pay his own

license from the funds of the company, notwithstanding that was the practice in the vicinity.—Appeal of Pramuk, Pa., 95 Atl. 326.

97.——Extraterritorial Force.—A decree appointing a receiver in Missouri, having no extraterritorial force, does not bind an administratrix, resident of Alabama, suing by attachment in Georgia.—Seaboard Air Line Ry. v. Burns, Ga. App., 86 S. E. 270.

98. **Remainders**—Action.—Where complainants' mother owned a remainder in land in which they sought to have their interest declared as against respondent, such mother having died leaving a husband, pending his statutory life estate, complainants could not test their title by action to recover possession, and the 10-year statute of limitations had no operation from the mother's death.—Jenkins v. Woodward Iron Co., Ala., 69 So. 646.

99. **Rewards**—Right to.—Where the Governor offered rewards for the arrest and conviction of murderers, members of a posse, killing such murderers while resisting arrest by force of arms, were entitled to the rewards.—Smith v. State, Nev., 151 Pac. 512.

100. **Sales**—Contract.—A contract held to be for the sale of stated quantities of rock, deliverable in approximately equal quantities for a specified time, subject to be increased or diminished after notice, where the amount taken would not be less than the buyer's consumption, not exceeding 10 per cent.—Atlanta Oil & Fertilizer Co. v. Phosphate Mining Co., Ga., 86 S. E. 216.

101.—Taxation.—Under a contract for the sale and purchase of wheat, with delivery any time after January 10th and February, inclusive, taxes on the wheat due March 1st were not allowable against the buyer, suing for breach of the contract.—Oriental Trading Co. v. Houser, Wash., 151 Pac. 242.

102.——Waiver.—Where goods were shipped from New York to a buyer in Boston, to be paid for as soon as received, if satisfactory, and for 21 days the seller took no steps to reclaim the property in default of payment, there was evidence supporting a finding that the seller waived the condition.—In re O'Callaghan, U. S. D. C., 225 Fed. 133.

103. **Shipping**—Unfitness of Vessel.—A vessel held liable for damage to a cargo of canned salmon from sea water and coal dust on a voyage from Alaska, because of unfitness of the vessel and negligence in failing to properly care for the cargo.—The Jeannie, U. S. D. C., 225 Fed. 178.

104. **Street Railroads**—Negligence.—Where defendant street railroad operated an electric welding machine, in a street near where plaintiff was working in a trench, which was calculated to frighten horses, the passing of a team close to the machine required that the electricity be turned off.—Fallon v. United Railroads of San Francisco, Cal. App., 151 Pac. 290.

105. **Sunday**—Publication.—Publication of an ordinance in a Sunday paper is an ineffective compliance with Act April 3, 1851, § 3 (P. L. 323), requiring publication of ordinance.—Commonwealth v. Kelly, Pa., 95 Atl. 322.

106. **Tenancy in Common**—Compensation.—Where one of several owners of undivided interests in land, authorized to sell the timber thereon for a specified price per acre, made a sale, he was entitled to reasonable compensation.—Harman v. Moss, Va., 86 S. E. 111.

107.——Trover.—Tenant in common of chattel cannot maintain trover against co-tenant because demand for possession has been refused, unless co-tenant subsequently consumed chattel or placed it beyond recovery by process.—Doyle v. Bush, N. C., 86 S. E. 165.

108. **Trade-Marks and Trade-Names**—Descriptive Terms.—There can be no trade-mark in the term "vacuum tread" or "vacuum cup," as to tires, where the names are descriptive of the action of rubber cups on the surface of the tire, which by suction grip the road and prevent skidding.—Pennsylvania Rubber Co. v. Dreadnaught Tire & Rubber Co., U. S. D. C., 225 Fed. 138.

109. **Trusts**—Married Women.—The passage of the Married Woman's Act of 1866 held to cause an executory trust created by deed to become executed if the grantee were married and over the age of minority.—Smith v. Frost, Ga., 86 S. E. 235.

110. **Usury**—Intent.—Where a lender refused to make a loan because the interest would not pay him for looking up the securities, and the borrower agreed to a reasonable amount for the loan and for examining the securities, the acceptance of such amount does not constitute usury.—Fisher v. Adamson, Utah, 151 Pac. 351.

111. **Vendor and Purchaser**—Assignee.—The assignee of a contract for the sale of real estate is bound only by the terms thereof and any conditions to which he is not a party and of which he has no notice are not binding upon him.—Mayes v. Martell, Wash., 151 Pac. 247.

112. **Waters and Water Courses**—Constitutional Law.—The state has such interest in the construction of irrigation reservoirs as to justify enactment of Rev. St. 1908, § 3205, regulating their construction.—Riverside Reservoir & Land Co. v. Green City Irr. Dist., Colo., 151 Pac. 443.

113.——Pollution.—Discharge of sewage into a stream is such a pollution thereof as entitles a lower riparian owner to recover damages for the injury.—McKinney v. Trustees of Emory and Henry College, Va., 86 S. E. 115.

114.——Prior Appropriation.—A prior appropriator of water in a stream is entitled to have the stream continue to flow without pollution, rendering the water unfit for the use to which to has been put.—Naches & Cowiche Ditch Co. v. Weikel, Wash., 151 Pac. 494.

115.——Riparian Rights.—As between riparian proprietors, the right of each qualifies that of the other, and the question is whether the use of water by one is reasonable and consistent with corresponding enjoyment by other.—McMahan v. Walhalla Light & Power Co., S. C., 86 S. E. 194.

116.——Sprinkling.—A provision in the franchise of a water company that free water should be supplied a county courthouse, and that the company might charge for water for municipal and irrigation purposes, did not obligate the water company to furnish free water to sprinkle the courthouse grounds.—Ely Water Co. v. White Pine County, Nev., 151 Pac. 335.

117. **Wills**—Construction.—Under will whereby testator gave personal estate to heirs of his brothers and sisters, all of whom were believed to be dead, while one was alive, the estate must be so divided that the children of the one then alive would take as if he were dead.—Taylor v. Carter, Va., 86 S. E. 120.

118.——Proponent.—To make out a prima facie case, the propounder of a will must introduce evidence of sanity, and not rely on a legal presumption thereof.—Penn v. Thurman, Ga., 86 S. E. 233.

119.——Spiritualism.—A belief in Spiritualism, or in any other dogma, if played upon so as to induce a will which otherwise would not have been made, resulting in an unnatural disposition of the testator's property, may invalidate the will on the ground of undue influence.—In re Hanson's Estate, Wash., 151 Pac. 264.

120.——Widow's Election.—Where a widow who has not elected to take against her husband's will becomes weak in mind, necessitating the submission of such election to the chancery court, the leaning of the law is toward the will.—In re Bringhurst, Pa., 95 Atl. 320.

121. **Witnesses**—Competency.—A former owner of land, not a party to a suit involving issue of private way by prescription, held competent to testify that the right of way as enjoyed by plaintiff originated and continued under permission obtained by him from the servient owner of the way in controversy, since deceased.—Witt v. Creasey, Va., 86 S. E. 128.

122.——Contradiction.—Plaintiff cannot contradict a witness of defendant, by showing that in another trial involving a different issue another person had testified to facts different from those testified to by defendant's witness in the pending action.—Bolles v. O'Brien, Colo., 151 Pac. 450.